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SUBJECT: ITALIAN PARLIAMENT APPROVES CONTROVERSIAL MEDIA
SECTOR REFORM BILL

SUMMARY

1. (U) ON DECEMBER 2, ITALY'S PARLIAMENT, BY A VOTE OF 155 TO 128, APPROVED A HIGHLY CONTROVERSIAL MEDIA-COMMUNICATIONS SECTOR REFORM LAW. KNOWN AS THE GASPARRI BILL (NAMED AFTER THE COMMUNICATIONS MINISTER), THE LAW NOW TREATS THE MEDIA MARKET AS A SINGLE BROAD, INTEGRATED MARKET, WITH NO DISTINCTIONS MADE AMONG TELEVISION, RADIO, PRESS, INTERNET SERVICES AND OTHER COMMUNICATION SERVICES. THE GOI ARGUES THAT THE LAW WILL CREATE MARKET/INVESTMENT OPPORTUNITIES, ENCOURAGE NEW MARKET PARTICIPANTS, AND PROMOTE GREATER COMPETITION. THE LAW SETS NEW OWNERSHIP CRITERIA A 20 PERCENT CEILING OF THE ENTIRE MEDIA SECTOR REVENUES FOR EACH INDIVIDUAL OPERATOR AND CALLS FOR THE PRIVATIZATION OF THE STATE-OWNED TELEVISION BROADCASTER RAI IN 2004. THE LAW ALSO IS DESIGNED TO HELP ACCELERATE THE SHIFT FROM ANALOG TO DIGITAL TRANSMISSION IN TELEVISION BROADCASTING.

2. (SBU) PARLIAMENT HAS HOTLY DEBATED THE LAW FOR NEARLY 18 MONTHS. OPPONENTS AND CRITICS OF THE LAW CONTEND THAT IT WAS DESIGNED EXCLUSIVELY TO ALLOW PM BERLUSCONI TO LEGITIMIZE HIS MEDIA HOLDINGS (WHICH TECHNICALLY EXCEED THOSE PERMITTED UNDER CURRENT LAW) AND TO EXPAND FURTHER HIS MEDIA EMPIRE. ON THE SPECIFICS, MANY CRITICS CLAIM THAT SUCH A BROAD DEFINITION OF THE MEDIA SECTOR WILL MAKE IT VIRTUALLY IMPOSSIBLE TO MEASURE OWNERSHIP PERCENTAGES VALUE, AND THUS, MONITOR THE 20 PERCENT CAP. OPPONENTS ALSO CONTEND THAT SUCH A BROAD DEFINITION COULD ALLOW A SINGLE OPERATOR OR OWNER TO DOMINATE ONE PARTICULAR FIELD.

SOME CLAIM THE BILL VIOLATES THE CONSTITUTION, AND IN PARTICULAR, CONSTITUTIONAL COURT DECISIONS REGARDING THE PRIME MINISTERS TELEVISION OWNERSHIP. PRESIDENT CIAMPI MUST SIGN THE BILL BEFORE IT BECOMES LAW; MANY ARE PRESSING HIM NOT TO DO SO. EVEN IF HE WERE TO SIGN THE LAW, OPPONENTS HOPE THE CONSTITUTIONAL COURT WOULD OVERRULE THE LAW. OUR BEST BET IS THAT CIAMPI WILL SIGN THE LAW. ON THE OTHER HAND, OUR CONTACTS BELIEVE THAT THE SUPREME COURT COULD WELL FIND CONSTITUTIONAL VIOLATIONS. REGARDLESS OF ITS PRACTICAL IMPACT, THE LEGISLATION IS STRENGTHENING PERCEPTIONS OF A GOVERNMENT INTERESTED IN FURTHERING ITS OWN NARROW INTERESTS. END SUMMARY.

3. (U) SINCE THE PARLIAMENT'S PASSAGE OF THE LAW ON DECEMBER 2, WE HAVE SPOKEN WITH SENIOR AIDES TO MINISTER GASPARRI, A KEY DRAFTER OF THE LEGISLATION, AS WELL AS POLITICAL OBSERVERS AND SECTOR CONTACTS.

EXPANDING THE DEFINITION

4. (U) THE GASPARRI LAW INTRODUCES THE CONCEPT OF AN INTEGRATED SYSTEM OF COMMUNICATIONS (THE SIC). THE SIC ENVISIONS THE MEDIA/COMMUNICATIONS MARKET AS ONE VERY BROAD SINGLE SECTOR ENCOMPASSING ALL MEDIA/COMMUNICATIONS, TO INCLUDE, BUT NOT BE LIMITED TO, TELEVISION AND RADIO BROADCASTING, THE PRESS, AND THE INTERNET. THE LAW ESTABLISHES A CEILING WHEREBY NO SINGLE OPERATOR CAN GENERATE MORE THAN 20 PERCENT OF OVERALL SIC REVENUES. ONE EXCEPTION PROVIDES FOR A 10 PERCENT CAP FOR THE FORMER TELECOMMUNICATIONS STATE MONOPOLY TELECOM ITALIA (WHICH ALSO OWNS A TV STATION LA 7) AS IT WAS THOUGHT THAT THE COMPANY ALREADY ENJOYS A DOMINANT POSITION IN THE MARKET. IN LIGHT OF THE BROAD DEFINITION OF THE MEDIA/COMMUNICATIONS MARKET, THE LAW ALSO OPENS THE POSSIBILITY FOR CROSS-OWNERSHIP IN TELEVISION AND IN THE PRESS. HOWEVER, ENTITIES OWNING MORE THAN ONE TELEVISION STATION ARE NOT ALLOWED TO PURCHASE NEWSPAPERS BEFORE THE END OF 2008.

FROM ANALOG TO DIGITAL BY 2006

BROADCASTING BE SWITCHED FROM THE ANALOG SYSTEM TO DIGITAL BY 2006. HOWEVER, THE LAW REQUIRES AN ACCELERATED PROCESS BY MANDATING THAT 70 PERCENT OF THE POPULATION BE COVERED BY DIGITAL BY THE END OF 2004. THE GOI MAINTAINS THAT THE GREATER TRANSMISSION CAPACITY OFFERED BY DIGITAL (5-6 TIMES THAT OF ANALOG TRANSMISSION) WOULD ALLOW CURRENT MARKET PLAYERS TO EXPAND AND ALSO ENCOURAGE NEW ENTRANTS. IN ADDITION, DIGITAL BROADCASTING WILL ALLOW END-USERS TO OPERATE INTERACTIVE CHANNELS. THUS, ACCESS TO PUBLIC SERVICES, INTERNET, AND OTHER DATA TRANSMISSION (SUCH AS TEXT MESSAGING) WILL BE POSSIBLE THROUGH A TELEVISION. THE GOI WILL PROVIDE FINANCIAL INCENTIVES FOR CONSUMERS TO ENCOURAGE THE PURCHASE OF DIGITAL DECODERS TO ENCOURAGE THE SHIFT TO DIGITAL.

 PRIVATIZATION OF STATE-OWNED RAI CHANNELS

16. (U) THE GASPARRI LAW INTRODUCES A TIMETABLE FOR THE PRIVATIZATION OF STATE-OWNED RAI (RADIO AND TELEVISION BROADCASTING CONGLOMERATE), WITH THE FIRST TRANCHE TO BEGIN IN JANUARY 2004. THE LAW SPECIFIES THAT NO SINGLE INVESTOR MAY HOLD MORE THAN ONE PERCENT IN RAI, BUT THE DEADLINE BY WHICH PRIVATIZATION MUST BE COMPLETED IS NOT DEFINED. HOWEVER, OUR MINISTRY CONTACTS BELIEVE THIS WILL BE A LONG PROCESS AND THAT RAI WILL REMAIN IN PUBLIC HANDS FOR THE FORESEEABLE FUTURE.

17. (U) OTHER SIGNIFICANT ELEMENTS CONTAINED IN THE GASPARRI LAW INCLUDE PROVISIONS RELATING TO OWNERSHIP OF LOCAL TELEVISION STATIONS, RESPONSIBILITIES AND RIGHTS OF REGIONAL GOVERNMENTS, THE PROTECTION OF MINORS, AND ADVERTISEMENT CEILINGS.

 THE CONTROVERSY

18. (SBU) PARLIAMENTARY REVIEW OF THE BILL LASTED OVER 18 MONTHS. THOUSANDS OF AMENDMENTS WERE PROPOSED TO THE ORIGINAL TEXT. EVEN IN THE LAST MINUTES BEFORE THE VOTE, IT WAS UNCLEAR WHETHER THE SENATE WOULD APPROVE THE GASPARRI BILL. THE OPPOSITION TRIED TO OBSTRUCT PASSAGE OF THE LAW AND CALLED FOR SEC RET VOTES - HOPING THAT SOME IN THE MAJORITY WOULD DEFECT AS THEY HAD DURING THE CHAMBER OF DEPUTIES VOTE. HOWEVER, A FLOOR VOTE WENT AHEAD; THERE WERE NO DEFECTIONS.

19. (SBU) CRITICS OF THE LEGISLATION, INCLUDING THE CENTER-LEFT OPPOSITION, CLAIM THE BILL WAS SPECIFICALLY DESIGNED TO ALLOW PRIME MINISTER BERLUSCONI'S MEDIA EMPIRE TO EXPAND. AT A MINIMUM, THE GASPARRI LAW LEGITIMIZES BERLUSCONI'S CURRENT MEDIA HOLDINGS, WHICH EXCEED THE MONOPOLY CEILINGS UNDER THE CURRENT LAW. (NOTE: A 2002 CONSTITUTIONAL COURT DECISION ORDERED ANYONE OWNING MORE THAN TWO BROADCAST NETWORKS TO RELINQUISH THE EXCESS NUMBER BY NOVEMBER 2003. UNDER THAT RULING, BERLUSCONI WOULD HAVE HAD TO GIVE UP ONE MEDIASET BROADCAST CHANNEL, EITHER SELLING IT OR CONVERTING IT TO A MUCH LESS PROFITABLE SATELLITE-ONLY NETWORK. END NOTE.)

110. (SBU) BERLUSCONI OPPONENTS BELIEVE (OR CLAIM TO BELIEVE) THAT, AS THINGS STAND NOW, THE PMS DIRECT OR OR INDIRECT CONTROL OVER MOST OF ITALY'S BROADCAST NETWORKS REPRESENTS AN UNACCEPTABLE CONFLICT OF INTEREST AND A THREAT TO DEMOCRACY. OPPONENTS TO THE BILL VOICED SPECIFIC CONCERNS THAT SUCH A BROAD DEFINITION OF THE MEDIA/COMMUNICATIONS SECTOR WILL MAKE IT VIRTUALLY IMPOSSIBLE TO MEASURE PERCENTAGE HOLDINGS IN ANY MEANINGFUL AND THUS MONITOR THE 20 PERCENT CAP. IN THIS RESPECT, OPPONENTS ALSO CLAIM THAT BY NOT BEING ABLE TO MEASURE ANTITRUST CEILINGS, THE LARGE OPERATORS ESSENTIALLY THE EXISTING TWO DOMINANT NETWORKS RAI AND BERLUSCONI'S MEDIASET - WILL BECOME LARGER, WITH NO REAL MARKET OPPORTUNITY FOR NEW ENTRANTS.

CONSTITUTIONAL COURT DECISIONS REGARDING BERLUSCONI'S TELEVISION INTERESTS. (NOTE: ONE 2001 RULING, FOR EXAMPLE, CALLED FOR ONE MEDIASET CHANNEL AND ONE RAI CHANNEL TO CEASE ANALOG TRANSMISSIONS BY YEARS END. WHILE THE GASPARRI LAW ACCELERATES TRANSITION FROM ANALOGUE TO DIGITAL, IT ALSO SO PRESERVES THE STATUS QUO OF ANALOGUE TRANSMISSIONS IN THE INTERIM. END NOTE). OPPONENTS OF THE LAW ALSO CONTEND THAT THE BILL IS NOT IN LINE WITH EU ANTITRUST RULES AND BELIEVE IT ALSO COULD BE APPEALED ON THESE GROUNDS.

12. (SBU) EMBASSY MEDIA/COMMUNICATIONS CONTACTS OUTSIDE OF THE COMMUNICATIONS MINISTRY TELL US THAT THE POSITIVE ASPECT OF THE LAW IS ITS RECOGNITION THAT THERE IS A GROWING, INDISPUTABLE INTEGRATION AMONG COMMUNICATIONS COMPARTMENTS (I.E., TELEVISION, RADIO, PRESS, TELEPHONY, AND THE INTERNET). HOWEVER, OUR CONTACTS ALSO EXPRESSED RESERVATIONS ABOUT THE LAW AND WERE PERPLEXED ABOUT THE BROAD DEFINITION OF THE SECTOR. THEY CONCURRED THAT IT WILL BE EXTREMELY COMPLICATED TO MEASURE THE SIZE OF SUCH A BROADLY DEFINED MARKET, AND THUS, TO MONITOR THE 20 PERCENT REVENUE LIMITATION. MOREOVER, THEY UNDERScoreD THE DANGER THAT ONE ENTITY MAY DOMINATE A SPECIFIC FIELD (E.G., TELEVISION) WITHOUT NECESSARILY VIOLATING THE 20 PERCENT CAP.

13. (SBU) OUR CONTACTS FURTHER NOTED THAT SUCH MILESTONE LEGISLATION ENACTED BY A GOVERNMENT HEADED BY A MEDIA MAGNATE INEVITABLY RAISES SUSPICIONS AND CONCERNS - ESPECIALLY, AS THE BROAD DEFINITION OF THE MEDIA SECTOR WILL LIKELY PERMIT BERLUSCONI'S MEDIASET TO GROW SUBSTANTIALLY. (SOME ESTIMATES INDICATE THAT MEDIASET COULD EVEN DOUBLE IN SIZE.) COMMUNICATIONS MINISTRY OFFICIALS, WHILE ACKNOWLEDGING THE ADVANTAGES FOR MEDIASET, MAINTAIN THAT ADVANCEMENT OF THE COUNTRY CANNOT BE HELD BACK BECAUSE OF THIS AND ALSO MAINTAIN THAT THIS IS AN OPPORTUNITY FOR ALL, NOT JUST MEDIASET.

CIAMPI AND THE CONSTITUTIONAL COURT

14. (SBU) THE LAW NOW GOES TO PRESIDENT CIAMPI FOR HIS APPROVAL AND SIGNATURE. THE PRESIDENT HAS THIRTY DAYS TO EXAMINE THE CONSTITUTIONALITY OF THE LAW, DURING WHICH TIME, HE MUST SIGN IT OR RETURN IT TO PARLIAMENT WITH AN AN EXPLANATION FOR THE REJECTION. OVER THESE PAST 18 MONTHS, PRESIDENT CIAMPI HAS TRIED TO STAY ABOVE THE POLITICAL FRAY OF CHARGES AND COUNTER-CHARGES STEMMING FROM THE PROPOSED LEGISLATION. ONLY WHEN THE LAW WAS FIRST INTRODUCED DID HE EXPRESS HIS OPINION THAT THERE IS NO DEMOCRACY WITHOUT PLURALISM AND IMPARTIALITY IN COMMUNICATIONS.

15. (SBU) THE OPPOSITION IS PRESSING THE PRESIDENT NOT TO SIGN, CALLING THE LAW UNCONSTITUTIONAL, NON-LIBERAL, TAILOR-MADE FOR BERLUSCONI, AND A LAW CONTRARY TO STATEMENTS BY CIAMPI HIMSELF IN THE CHAMBERS. ON THE OTHER HAND, THE MAJORITY HAS DEFENDED THE LAW, ARGUING THAT IT GUARANTEES AND DEFENDS PLURALISM. PRESIDENT CIAMPI IS IN AN UNENVIABLE POSITION; WHATEVER DECISION HE TAKES WILL LIKELY STOKES THE POLITICAL FIRES.

16. (SBU) AGAINST THIS BACKDROP, THE CENTER RIGHT SUDDENLY HAS DEVELOPED RENEWED INTEREST IN PASSAGE OF DRAFT CONFLICT OF INTEREST LEGISLATION, PENDING IN PARLIAMENT FOR AT LEAST A YEAR, WITH A FINAL VOTE SCHEDULED FOR DECEMBER 17. THE MAJORITY MAY HOPE THAT PASSAGE OF THIS LEGISLATION MIGHT MAKE IT EASIER FOR PRESIDENT CIAMPI TO SIGN THE GASPARRI LAW. (NOTE: UNDER THE DRAFT CONFLICT OF INTEREST LEGISLATION, SOME GOVERNMENT POSITIONS WOULD BE CONSIDERED INCOMPATIBLE WITH SOME PROFESSIONAL AND BUSINESS ACTIVITIES, ALTHOUGH OWNERSHIP OF A COMPANY OR SHARES ALONE

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UR ONLY WHEN A PUBLIC OFFICIAL TOOK ACTION THAT NOT ONLY FAVORED HIS/HER COMPANY, BUT ALSO HARMED THE PUBLIC INTEREST, UNLESS THE ACT WOULD AFFECT THE GENERAL INTEREST OF MANY OTHER COMPANIES. CASES OF PRESUMED CONFLICT OF INTEREST WOULD BE REFERRED TO PARLIAMENT, WHICH WOULD DETERMINE THE SANCTIONS. END NOTE.)

COMMENT

17. (SBU) MOST OF OUR CONTACTS BELIEVE IT UNLIKELY THAT CIAMPI WILL SEND THE LAW BACK TO PARLIAMENT, AND WE SHARE THIS PERSPECTIVE. TO DO SO WOULD BE ALMOST UNPRECEDENTED AND SET THE STAGE FOR AN INSTITUTIONAL CONFLICT BETWEEN THE PRIME MINISTER AND THE PRESIDENT SOMETHING BOTH WOULD LIKE TO AVOID. OUR OBSERVATIONS SUGGEST THAT SUCH CONTROVERSIAL LEGISLATION WOULD NOT HAVE BEEN PASSED ABSENT SOME TYPE OF TACIT UNDERSTANDING BETWEEN THE BERLUSCONI GOVERNMENT AND PRESIDENT CIAMPI. ON THE OTHER HAND, SOME OF OUR CONTACTS DO BELIEVE THAT THE CONSTITUTIONAL COURT MAY FIND CONSTITUTIONAL VIOLATIONS.

18. (SBU) IT IS CLEAR THAT THE CENTER RIGHT MAJORITY WANTS TO CHALK UP SEVERAL LEGISLATIVE VICTORIES BEFORE THE CHRISTMAS RECESS AND BEFORE CAMPAIGNING BEGINS IN EARNEST FOR NEXT YEAR'S EUROPARLIAMENTARY ELECTIONS. PASSAGE OF THE TWO MOST CONTROVERSIAL PIECES OF LEGISLATION OF THE

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119. (SBU) ASSUMING THE GASPARRI LAW COMES INTO FORCE (WITH OR WITHOUT ACCOMPANYING CONFLICT OF INTEREST LEGISLATION), IT WILL TAKE CONSIDERABLE TIME TO ASSESS IT REAL IMPACT UPON COMPETITION AND FAIR PLAY IN THE ITALIAN MEDIA/COMMUNICATIONS SECTOR. IN OUR VIEW, THE ITALIAN MEDIA NOW DOES NOT SUFFER FROM A LACK OF DIVERSE OPINION. HOWEVER, THE GASPARRI LAW CLEARLY SETS THE STAGE FOR FURTHER CONCENTRATION OF MEDIA OWNERSHIP. BERLUSCONI AND HIS SUPPORTERS SEEM UNSWAYED BY PERCEPTIONS OF OTHERS (OUTSIDE THIS MISSION) THAT THIS LEGISLATION FURTHER CEMENTS A MEDIA SYSTEM LACKING DIVERSITY OF OWNERSHIP. END COMMENT.

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